



Human Rights Council
2nd Session of the Universal Periodic Review, 5 – 16 May 2008

ICJ Submission to the Universal Periodic Review of Romania

February 2008

I. Introduction

The International Commission of Jurists (ICJ) welcomes this opportunity to contribute to the Human Rights Council's Universal Periodic Review of Romania. This short submission raises the issue of secret detention centres alleged to have been operated by the CIA on Romanian territory between 2003 and 2005, with the knowledge and authorisation of the Romanian authorities. The strong evidence of Romanian co-operation in the CIA renditions and secret detentions programme, which has resulted in serious violations of human rights, and the continuing absence of objective investigation by relevant authorities or accountability of responsible officials, raise serious and continuing human rights concerns. These should be addressed as a matter of priority in the Human Rights Council's Universal Periodic Review of Romania.

II. Romania and the US programme of renditions and secret detentions

Since September 2001, both renditions and secret detentions have been an acknowledged part of the United States' counter-terrorism strategy.¹ "Renditions" or "extraordinary renditions" involve the seizure and transfer of suspects, outside of the regular legal procedures of extradition, deportation, expulsion or removal, without due process safeguards.² It has been acknowledged by the United States that some of the "high value detainees" subject to rendition have been held in secret detention centres operated by the CIA. In June 2007, persistent allegations, based on the research of journalists, NGOs, and a temporary committee of the European Parliament,³ that CIA-run secret detention centres existed in European countries including Romania, were confirmed by the findings of Senator Dick Marty's inquiry for the Parliamentary Assembly of the

¹ Although the US denies that it renders suspects to countries where it believes they will be tortured: Condoleezza Rice, Remarks on her departure for Europe, 5 December 2005.

² Reports of the Canadian Commission of Inquiry into actions of Canadian Officials relating to Maher Arar, 12 December 2006, www.ararcommission.ca; Amnesty International, Partners in Crime, Europe's Role in Renditions, Eur 01/008/2006.

³ The European Parliament's Temporary Committee on the Alleged Use by the CIA of European Countries for the Transfer and Illegal Detention of Prisoners (TDIP), reported in 2006: European Parliament, Resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners. P6 TA PROV (2007) 0032

Council of Europe.⁴ In a Resolution adopted following Senator Marty's report,⁵ the Parliamentary Assembly stated that it "now considers as established with a high degree of probability that ... secret detention centres operated by the CIA have existed for some years" in Romania and Poland and that "these secret places of detention formed part of the HVD (High Value Detainee) programme publicly referred to by the President of the United States on 6 September 2006".⁶

Specifically, the inquiry of Senator Marty found that a "black site" detention centre operated as part of the High Value Detainees Programme between 2003 and late 2005. Drawing on interviews and flight records, Senator Marty was able to identify only the general area in which the centre was located,⁷ though journalists and other sources have identified Mihail Kogalniceanu Airport base as the most likely location.⁸

The inquiry found that the detentions took place within the framework of a formal agreement,⁹ (the "SOFA Supplemental") which created special rights of access on Romanian territory not only for US military forces but also for those working with them, including civilian airline companies, and which allowed US personnel to operate on Romanian territory "with complete freedom from scrutiny or interference." Senator Marty concluded that a small number of high-level office-holders authorised and oversaw secret detentions in Romania,¹⁰ but that knowledge of the operations was preserved within a very small circle, with the majority of civilian office-holders, including the directors of the civilian intelligence agencies, unaware of the detentions. The role of Romanian military intelligence was to create a sealed zone within which CIA security and secrecy would be completely protected.¹¹

National investigations

The Romanian government has strongly denied that renditions or secret detentions have taken place on Romanian territory,¹² and has pointed to internal investigations by relevant Romanian authorities into the allegations.¹³ A Senate Committee of Inquiry to Investigate the allegations

⁴ Committee on Legal Affairs and Human Rights, *Secret Detentions and illegal transfers of detainees involving Council of Europe Member States: Second report*, Doc.11302rev.Explanatory Memorandum by Mr Dick Marty, Rapporteur.

⁵ Resolution 1562 (2007) on Secret Detentions and Illegal Transfers of Detainees involving Council of Europe Member States, para.4

⁶ The Romanian delegation to PACE issued a dissent to the Marty report, rejecting its findings. Doc.11302 Addendum, 19 June 2007.

⁷ Marty report, *op cit*, para.222

⁸ A fax intercepted by the Swiss intelligence services, from the Egyptian Foreign Ministry to its Embassy in London, stated that 23 prisoners were being held at Mihail Kogalniceanu base.

⁹ Marty Report, *op cit*, para.146. The Agreement between Romania and the United States of America regarding the Status of US Forces in Romania, was signed on 30 October 2001

¹⁰ Including the former and current Presidents of Romania, the former Minister of National Defence, and the Head of Directorate for Military Intelligence. Marty report, *op cit*. para.211

¹¹ Marty report, *op cit*, para.221

¹² Response of the Romanian Government on the investigation initiated by the Secretary General of the Council of Europe, in accordance with Article 52 ECHR, appended to the letter from Mihal-Razvan Ungureanu, Romanian Minister of Foreign Affairs, to Terry Davis, 15.02.2006; at page 4.

¹³ Parliamentary Assembly of the Council of Europe, Doc.11302 Addendum, Secret detentions and illegal transfers of detainees involving Council of Europe Member States: Dissenting Opinion by the delegation of Romania to the Parliamentary Assembly (letter of 15 June 2007) para.1.

regarding the use of Romanian territory for CIA detention facilities or flights by CIA-chartered aircraft was established in December 2005.¹⁴ The inquiry, which issued its final report in March 2007, found that there was no evidence of CIA rendition aircraft landing in Romania or overflying Romanian territory, that no Romanian authorities could have participated, either knowingly or through omission or negligence, in unlawful detainee transfer operations through Romanian territory, and that there was no facility at Mihail Kogalniceanu base which could have been used for the purpose of detention.

The adequacy of the Senate investigations has been questioned: Senator Marty criticised the restrictive terms of the inquiry's remit and pointed to contradictions between the conclusions of the Parliamentary Committee and flight records of aircraft linked with the CIA, into MK Airfield. He considered that the Romanian Parliamentary inquiry was: "an exercise in denial and rebuttal, without impartial consideration of the evidence"¹⁵

Compliance with UN human rights obligations

Renditions and secret detentions as they have been operated by the CIA involve multiple violations of human rights protected by UN human rights treaties, including the right to liberty and security of the person; the freedom from torture and other cruel, inhuman or degrading treatment and the right to an effective remedy.¹⁶ Prolonged *incommunicado* secret detention has been found by the Committee against Torture to amount in itself to a violation of the Convention Against Torture,¹⁷ and secret detentions amount to disappearances.¹⁸ Co-operation in, or tolerance of, renditions and secret detentions on the territory of the State, violates positive obligations to protect against violations of human rights, imposed by the International Covenant on Civil and Political Rights (ICCPR),¹⁹ the Convention Against Torture (CAT),²⁰ as well as under the European Convention on Human Rights (ECHR), to which Romania is a party.²¹ These obligations apply irrespective of agreements such as the "SOFA supplemental".²²

Obligations of investigation and reparation

¹⁴ Article 1 of Decision No.29 of the Senate

¹⁵ Marty Report, *op cit*, para.230

¹⁶ *Agiza v Sweden*, Committee against Torture, communication No.233/2003; *Alzery v Sweden* Communication No 1416/2005, Sweden 06/11/2006, CCPR/C/88/D/1416/2005

¹⁷ Committee Against Torture, Concluding Observations on the United States, CAT/C.USE.CO/2, 18 May 2006, para.17, where the Committee found that secret detention constituted *per se* a violation of the Convention Against Torture.

¹⁸ United Nations Convention on Enforced Disappearances, adopted by the Third Committee of the UN General Assembly on 13 November 2006, Article 2. See further the UN Declaration on the Protection of all persons from Enforced Disappearance, preamble, para.3, Inter-American Convention on Forced Disappearance of Persons, Article II.

¹⁹ Articles 2, 7, 9 of the ICCPR. UN Human Rights Committee General Comment 20 (1992) on Article 7 ICCPR, (the right to freedom from torture or other cruel, inhuman or degrading treatment or punishment); General Comment 31 of the Human Rights Committee, para. 8, 15; *Delgado Paéz v Columbia* Communication.No.195/1985.

²⁰ Article 2 CAT

²¹ *Osman v UK*, (2001) 29 EHRR 245; *X and Y v the Netherlands*, (1985) 8 EHRR 235.

²² European Court of Human Rights, *Mathews v UK*, App No 24833.94, *Bosphorus v Ireland*, App No 45036.98, *M and Co. v Germany*, App No 13258/87.

Under the ICCPR and CAT, credible allegations of serious violations of human rights including the freedom from torture and other cruel, inhuman or degrading treatment, and disappearances, must be subject to independent and effective investigation,²³ capable of bringing to justice those responsible for the violation.²⁴ Following the 2007 report of Senator Marty, to comply with its obligations under the ICCPR and Article 12 CAT, Romania must undertake an investigation that is independent, thorough, and transparent.

In addition to investigation, victims of renditions and secret detentions are entitled to other measures of reparation for violations of their human rights, including restitution and compensation, and measures of rehabilitation, satisfaction and guarantees of non-repetition.²⁵ Such obligations attach to States that have aided and assisted in serious violations of human rights.

Conclusions

The ICJ therefore calls on the Human Rights Council to:

- **Condemn the serious and systematic violations of UN human rights treaty obligations, including under the ICCPR and CAT, that have taken place in Romania through renditions and secret detentions;**
- **Urge Romania to establish an independent and transparent inquiry, with full investigative powers to require the attendance of persons and the production of documents, to investigate allegations of the involvement of Romanian officials in renditions and secret detentions;**
- **Ensure the accountability, including where appropriate through the criminal justice process, of those persons responsible for renditions and secret detentions on Romanian territory and provide measures of reparation to the victims of renditions and secret detentions in Romania;**
- **Take measures to reform law and practice, including review and accountability of the military intelligence services, to protect against future violations of human rights of this kind, and thereby comply with Romania's positive obligations to protect human rights on its territory.**

²³ Article 12 CAT; Article 2(3) ICCPR; HRC General Comment No 6 on Article 6 ICCPR, HRI/GEN/1/Rev. para.4; *Rodriguez v Uruguay*, CCPR/C/51/D/322/1988; *Almeida de Quinteros v Uruguay* CCPR/C/19/D/1981.

²⁴ CAT Articles 5, 6, 12, 13; ICCPR Article 2(3); HRC, General Comment 31, The nature of General Legal Obligations imposed on States Parties to the Covenant, 26/05/04, CCPR/C/21/Rev.1/Add.13, Paras. 15, 18.

²⁵ UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/60/509/Add.1, 21 March 2006, Principle XI. HRC, General Comment 31, *op cit*, para.15.